

RONALD L. SMITH,	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	No. 00-4310
	:	
WILLIAM J. HENDERSON, Postmaster	:	
General, United States Postal Service;	:	
ADOLPH TESTA; MICHAEL BROWN;	:	
and WILLIAM MILLS, individually and	:	
in their official capacities,	:	
Defendants.	:	
	:	

AUGUST 30, 2001

¹ In his Response to Defendants’ Motion for Summary Judgment, Smith states that he “does not oppose Defendants’ Motion as to the individual defendants”. (Pls’. Resp. Mot. Summ. J., 1). Therefore, summary judgment in favor of the individual Defendants will be granted and this Opinion will only deal with the Defendants in their official capacities with the USPS.

² Although Smith does not state under which statutes he is bringing his case, his counsel does state on the Civil Cover Sheet attached to the Complaint that the Cause of Action is brought under “42 U.S.C. 2000e”. Furthermore, the only four cases that Smith cites in his pleadings all deal with retaliation under Title VII.

following reasons, the Motion is granted.

I. BACKGROUND

Smith was employed by the USPS as a mechanic at the Lancaster, Pennsylvania Processing and Distribution Center (“the Lancaster Plant”) from 1979 until December 14, 1997 when he was terminated for Improper Conduct/Unacceptable Performance. Smith claims that he was fired in retaliation for a grievance that he filed with the Equal Employment Office of the United States Postal Service (“EEO”) on November 2, 1995. In his 1995 EEO grievance, Smith alleged that Testa, the Lancaster Plant Manager, discriminated against him on the basis of his age (53) when: (1) on October 13, 1995, while performing his job, Testa screamed at him, “you are here to repair the machine, do you hear me”; (2) on October 26, 1995 Testa told him, “You are going to be fired, mark my words”; and (3) on November 2, 1995, Testa told him that he was not on the job for ten minutes. (Pl’s. Resp. to Defs.’ Mot. for Summ. J., Ex. 2). On January 18, 1996, the EEO dismissed Smith’s grievance because he had not “suffered a personal loss or harm with respect to a term, condition, or privilege of employment.” (*Id.*). According to Smith, there were no more incidents between he and Testa or any other supervisors until the events detailed below occurred in 1997 which lead to his dismissal. Furthermore, Smith alleges that he did not file any other grievances with the EEO until December 6, 1997, when he filed a grievance alleging that he had been terminated in retaliation for engaging in a protected activity, namely, his filing of the age discrimination grievance on November 2, 1995.

In June, 1997 Smith was assigned to perform the maintenance on the small package bundle sorter (“SPBS”). An essential part of the SPBS are the carrier cells (“cells”). The cells, which contain parts that sometimes can be repaired or replaced, help route packages

being sorted in the SPBS to their appropriate destinations. According to the Defendants, due to a shortage, management at the Lancaster Plant had directed that cells be repaired if possible, rather than be replaced by entirely new cells.³ Also in June, 1997, twenty-five to thirty cells disappeared over one weekend. When cells continued to disappear, a memorandum was issued on August 14, 1997 to all Maintenance Supervisors directing them to inform all employees that no parts could be thrown out without first filing a form 969 and getting supervisory approval. Following the issuance of the memorandum, Brown, Smith's supervisor, conducted a meeting with all employees under his supervision concerning the memorandum. Smith received a copy of the memorandum at the meeting. Despite the issuance of the memorandum and the meeting, cells continued to disappear.

The Postal Inspection Service then conducted an investigation, including video surveillance on September 27, 1997. According to the Postal Inspector, Smith was observed at 3:50 p.m. carrying dismantled "cell parts to the facility trash compactor, and placing the parts into the trash compactor." (Defs.' Mot. for Summ. J., Ex. B). The Postal Inspector also stated that Smith was observed at 7:15 p.m. bringing a cart loaded with cells "out to the dock and down an access ramp leading to the facility tarmac." (Id.). Smith was then observed returning up the ramp with an empty cart. (Id.). After a search of the tarmac and the facility trash compactor on the tarmac, the Postal Inspectors found multiple cells in the trash compactor which had not been there previously. (Id.). Smith however, claims that he did not dispose of any cells. Instead Smith claims that he only disposed of worthless parts in the trash compactor. (Pl's. Resp. to

³ According to the Defendants, the cells have a value of approximately four hundred dollars each.

Defs.’ Mot. for Summ. J., Ex. 19, 193). Smith further claims that he took the cart loaded with cells outside with him on his break so that he “knew what [he] was going to work on”. (Id., 162-164). However, by mistake, Smith claims that he brought an empty cart back inside and left the cart full of cells outside and forgot about them. (Id., 162-164, 214-215, 227). After the events of September 27, 1997, Smith was placed on immediate administrative leave pending a final investigative report. Smith was issued a Notice of Proposed Removal for Improper Conduct/Unacceptable Performance on November 3, 1997, to which he did not respond. Smith was then issued a Letter of Decision-Removal upholding the removal on November 25, 1997, with an effective date of December 14, 1997.

Smith filed his formal grievance with the EEO for retaliation on December 6, 1997. On June 3, 1999, the Administrative Judge issued a final Agency Decision finding no discrimination based upon retaliation. Smith appealed the final Agency Decision, and after a full hearing, the Merit Systems Protection Board (“MSPB”), affirmed the USPS’s decision to terminate Smith on October 20, 1999. On March 31, 2000, the MSPB denied Smith’s petition for review and its decision became final. Smith then filed the instant civil action on August 23, 2000.

Smith alleges, without foundation, that after he filed the 1995 EEO grievance alleging age discrimination, Testa was “spiteful of Plaintiff [because he] challenge[d] him and was infuriated by the humiliation brought upon him”. (Pl.’s Resp. to Defs.’ Mot. for Summ. J., 5). Smith further alleges that Testa then began to bide his time and orchestrate a detailed conspiracy, the result of which surfaced almost two years later when Smith was terminated. Smith alleges that Testa waited for such a long time to retaliate against him because Smith

“would certainly have been known to have layers of protection against unfounded actions inspired by improper motives, and any plan to terminate [Smith] under the circumstances would have to have been assiduously planned and implemented.” (Id., 2). Specifically the alleged conspiracy consisted of, inter alia, the following events: Testa avoiding any contact with Smith after 1995; Smith being transferred to a new shift and away from a supervisor with whom he was friendly; Smith being assigned to perform the maintenance on the SPBS; Testa implementing the new procedure concerning the disposal of parts; Smith being blamed for throwing out cells; and Testa’s alleged statement during Smith’s administrative leave that “we want to be successful in removing Ron Smith from the rolls.” (Id., Ex. 18).

II. STANDARD

Pursuant to Rule 56(c) of the Federal Rules of Civil Procedure, summary judgment is proper "if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." FED. R. CIV. P. 56(c). Essentially, the inquiry is “whether the evidence presents a sufficient disagreement to require submission to the jury or whether it is so one-sided that one party must prevail as a matter of law.” Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 251-252 (1986). The moving party has the initial burden of informing the court of the basis for the motion and identifying those portions of the record that demonstrate the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). An issue is genuine only if there is a sufficient evidentiary basis on which a reasonable jury could find for the non-moving party. Anderson, 477 U.S. at 249. A factual dispute is material only if it might affect the outcome of the suit under governing law. Id. at 248.

To defeat summary judgment, the non-moving party cannot rest on the pleadings,

but rather that party must go beyond the pleadings and present "specific facts showing that there is a genuine issue for trial." FED. R. CIV. P. 56(e). Similarly, the non-moving party cannot rely on unsupported assertions, conclusory allegations, or mere suspicions in attempting to survive a summary judgment motion. Williams v. Borough of W. Chester, 891 F.2d 458, 460 (3d Cir. 1989) (citing Celotex, 477 U.S. at 325 (1986)). Further, the non-moving party has the burden of producing evidence to establish prima facie each element of its claim. Celotex, 477 U.S. at 322-23. If the court, in viewing all reasonable inferences in favor of the non-moving party, determines that there is no genuine issue of material fact, then summary judgment is proper. Id. at 322; Wisniewski v. Johns-Manville Corp., 812 F.2d 81, 83 (3d Cir. 1987).

III. ANALYSIS

As an initial matter, as stated above, in order to defeat summary judgment, the non-moving party cannot rest on the pleadings, but rather that party must go beyond the pleadings and present "specific facts showing that there is a genuine issue for trial." FED. R. CIV. P. 56(e); Big Apple BMW, Inc. v. BMW of N. Am. Inc., 974 F.2d 1358, 1362 (3d Cir. 1992). To the extent that Smith attempted to assert causes of action in his Complaint other than retaliation for engaging in a protected activity in violation of Title VII, summary judgment is granted in favor of the Defendants on these claims because Smith's Response to the Defendants' comprehensive Motion for Summary Judgment discusses only the retaliation claim. Id. Furthermore, as noted above, summary judgment is granted in favor of all of the Defendants in their individual capacities on all claims since Smith states in his Response to the Motion for Summary Judgment that "Plaintiff does not oppose Defendants' Motion as to the individual defendants." (Pls.' Resp. Mot. Summ. J., 1). Therefore, the only issue left to be decided is

whether the USPS violated Title VII by retaliating against Smith for engaging in a protected activity.

The analysis of a motion for summary judgment on a retaliation claim under Title VII proceeds in three stages. Jones v. Sch. Dist. of Phila., 198 F.3d 403, 410 (3d Cir.1999) (citing McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802-804 (1973)); Troendle v. Yellow Freight, Inc., No. 97-2430, 1999 WL 89747, *3 (E.D. Pa. Feb. 2, 1999); Page v. ECC Mgmt. Servs., 97-2654, 1998 WL 408821, *5 (E.D. Pa. Jul. 20, 1998). First, the plaintiff must establish a prima facie case of unlawful retaliation. Id. Second, if the plaintiff produces sufficient evidence to establish a prima facie case, the defendant has the burden of coming forth with a legitimate, non-discriminatory reason for its actions against the plaintiff. Id. Third, if the defendant satisfies this burden, the plaintiff must prove by a preponderance of the evidence that the proffered reason is pretextual. Id.

A. Smith's Prima Facie Case

In order to establish a prima facie case of retaliation, a plaintiff must show that: (1) he or she engaged in a protected employee activity; (2) the employer took an adverse employment action after or contemporaneous with the protected activity; and (3) a causal link exists between the protected activity and the adverse employment action. Weston v. Pa., 251 F.3d 420, 430 (3d Cir. 2001).

First, Smith's filing of a grievance with the EEO was a protected activity. Id. Second, "[t]he Supreme Court has defined a tangible, adverse employment action as a 'significant change in employment status, such as hiring, firing, failing to promote, reassignment, or a decision causing a significant change in benefits.'" Id. at 430-431 (quoting Burlington Indus.

Inc. v. Ellerth, 524 U.S. 742, 749 (1998)). Therefore, Smith’s termination was an adverse employment action. However, lastly and most importantly, Smith must prove that there was a causal link between the protected activity and the adverse employment action. The Defendants argue that no causal link exists because of the lapse of nearly two years between the protected activity and the adverse employment action, and because of the complete lack of any pattern of antagonism or harassment.

Smith argues that under Kachmar v. Sungard Data Systems, Inc., 109 F.3d 173 (3d Cir. 1997), that in the absence of temporal proximity, “circumstantial evidence of a ‘pattern of antagonism’ following the protected conduct can [] give rise to the inference” of discrimination. Id. at 177. Smith also argues that “the proffered evidence, looked at as a whole, may suffice to raise the inference.” Id. However, unlike in the present case, in Kachmar the retaliatory termination occurred less than a year after the last protected activity. Id. Furthermore, throughout that period, there were numerous circumstances that suggested termination might occur, including statements that the plaintiff was off the management track and that she should start looking for another job. Id. at 178. The Third Circuit “concluded that the cumulative effect revealed a pattern of antagonism, which overcame any doubts raised by the temporal separation of events and therefore, causation had been established.” Weston, at 432 (explaining and distinguishing Kachmar).

The present action is much closer to the situation presented in Weston, 251 F.3d 420, than to the situation presented in Kachmar. In Weston, the plaintiff had filed a retaliation claim based upon sex discrimination and more than a year later was subject to an adverse employment action. Id. at 432. However, the Third Circuit, in denying the retaliation claim,

held that the “alleged pattern of antagonism in this case did not portend any future retaliation. Instead, the adverse employment actions were discrete responses to particular occurrences. Whereas a pattern of antagonism was clear on the facts in Kachmar, there is no evidence in this case that the [defendant’s] actions were related.” Id. Here, like in Weston, by Smith’s own admission, there is no distinguishable pattern of antagonism which links the 1995 EEO grievance to Smith’s subsequent termination almost two years later. In fact, until June, 1997, Smith does not allege that anything occurred to him which remotely suggests a pattern of antagonism. It is not enough for Smith to prove that he engaged in a protected activity and that there was a subsequent adverse employment action taken against him. Id. at 430. Smith must prove that the two events are causally connected. Id. Here, Smith has failed to show any pattern of antagonism that would causally link the 1995 EEO grievance with his termination in 1997.

Smith simply speculates that there was a grand conspiracy being incubated by Testa, waiting to be hatched at the right moment. However, in a motion for summary judgement, the non-moving party cannot rely on unsupported assertions, conclusory allegations, or mere suspicions in attempting to survive the motion as Smith is attempting to do. Williams, 891 F.2d at 460 (citing Celotex, 477 U.S. at 325 (1986)). Furthermore, Smith may only survive summary judgment if he provides sufficient evidence which would allow a reasonable jury to find in his favor. Anderson, 477 U.S. at 249. Smith has failed to accomplish this. A reasonable jury could not find in Smith’s favor based upon the speculative conspiracy alleged by Smith. Smith takes the fact of his protected activity and the fact of the adverse employment activity and then attempts to string the two events together with a series of conclusory allegations and events which happened to occur in the intervening period. For the forgoing reasons, it is appropriate to

grant summary judgment in favor of the Defendants. However, in order to be complete, we will continue the analysis and address the second and third factors of the McDonnell Douglas Title VII test.

B. The Defendants' Legitimate, Non-Discriminatory Reason and Smith's Evidence of Pretext

Even if Smith had been able to prove a prima facie case of retaliation, the Defendants have provided sufficient evidence of a legitimate, non-discriminatory reason for their actions against Smith. The Postal Inspector's investigation and Investigative Memorandum gave the management at the Lancaster Plant compelling reasons to terminate Smith. Furthermore, Smith has not proven by a preponderance of the evidence that the Defendants' proffered reason for termination was pretextual. Smith has not provided sufficient direct or circumstantial evidence "from which a factfinder could reasonably either (1) disbelieve the employer's articulated legitimate reasons or (2) believe that an invidious discriminatory reason was more likely than not a motivating or determinative cause of the employer's action." Fuentes v. Perskie, 32 F.3d 759, 764 (3d Cir. 1994). Smith "cannot simply show that the employer's decision was wrong or mistaken, since the factual dispute at issue is whether discriminatory animus motivated the employer, not whether the employer is wise, shrewd, prudent, or competent." Id. at 765. Rather, Smith "must demonstrate such weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions in the Defendants' proffered legitimate reasons for their action that a reasonable factfinder could rationally find them 'unworthy of credence,' and hence infer 'that the employer did not act for [the asserted] nondiscriminatory reasons.'" Id. at 764-65 (citations and footnote omitted).

Therefore, it is not enough for Smith to allege that he did not in fact dispose of the cells or that the decision to terminate him was incorrect. Smith must provide competent evidence that would allow the jury to find the Defendants' proffered reason to be "unworthy of credence." Smith's speculative allegations of a grand conspiracy which eventually culminated in his termination are insufficient to allow a reasonable factfinder to disbelieve the Defendants' articulated reason or to believe that the Defendants actually acted with a discriminatory motive. Smith has failed to point out such inconsistencies or contradictions in the Defendants' proffered reason which would render that reason unworthy of credence. Therefore, even if Smith had been able to prove his prima facie case, he could not show that the Defendants' proffered reason for his termination was pretextual.

VI. CONCLUSION

First, summary judgment is granted in favor of all the Defendants in their individual capacity because Smith does not oppose the Defendants' Motion for Summary Judgment as to the individual defendants. Second, to the extent that Smith attempted to assert causes of action other than retaliation in violation of Title VII in his Complaint, summary judgment is granted in favor of the Defendants on those claims because Smith only addresses retaliation under Title VII in his Response to the Defendants' Motion for Summary Judgment. Lastly, because Smith is unable to prove his prima facie case against the Defendants in their official capacity for retaliation under Title VII, summary judgment is granted in favor of the Defendants.

An appropriate Order follows.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

RONALD L. SMITH,

Plaintiff,

v.

WILLIAM J. HENDERSON, Postmaster
General, United States Postal Service;
ADOLPH TESTA; MICHAEL BROWN;
and WILLIAM MILLS, individually and
in their official capacities,

Defendants.

CIVIL ACTION

No. 00-4310

ORDER

AND NOW, this 30th day of August, 2001, upon consideration of Defendants' Motion for Summary Judgment (Dkt. No. 10), and any Responses thereto, it is hereby ORDERED that the Motion is GRANTED and Plaintiff's Complaint is DISMISSED with prejudice.

BY THE COURT:

ROBERT F. KELLY,

J.